

**REGULAR MEETING OF CASS COUNTY BOARD OF COMMISSIONERS  
NOVEMBER 7, 2016**

**1. MEETING CALLED TO ORDER**

Chairwoman Mary Scherling called the meeting to order at 3:30 PM with all members present as follows: Ken Pawluk, Rick Steen, Arland H. Rasmussen, Chad M. Peterson and Mary Scherling.

**2. PLEDGE OF ALLEGIANCE**

Heather Worden led the Pledge of Allegiance.

**3. MINUTES APPROVED**

***MOTION, passed***

**Mr. Rasmussen moved and Mr. Steen seconded that the minutes of the previous meeting be approved as written. Motion carried.**

**4. AGENDA, Order approved**

***MOTION, passed***

**Mr. Peterson moved and Mr. Steen seconded to approve the order of the agenda. Motion carried.**

**5. CONSENT AGENDA APPROVED**

***MOTION, passed***

**Mr. Steen moved and Mr. Peterson seconded to approve the consent agenda as follows: On roll call vote, the motion carried unanimously.**

- a. Authorize the chair to sign the Federal Aid program sheet for 2017-2020 for road and bridge projects.
- b. Receive and file Indemnity Bonds on Lost Instrument for Timothy Scott Allmaras and Victoria Schlauderaff; and authorize the county auditor and county treasurer to issue duplicate checks.
- c. Approve amendment to Cass County Employee Handbook Policy 311 Leave Donation: "Employees receiving donated leave will have 365 days from the time of the request to use the donated leave. Donated leave not used within the 365-day timeframe will be moved from the employee leave balance to the County Donated Leave Bank"; and approve amendment to Policy 507 Breaks for Nursing Mothers: "A clean and safe water source with facilities for washing hands and rinsing breast pump equipment is located near the designated lactation rooms. Refrigerators are available so breast milk can be stored appropriately. Employees storing milk in the refrigerator assume all responsibility for the safety of the milk".
- d. Authorize the chair and county auditor to sign quit claim deeds for tax-forfeited properties redeemed by former owners.
- e. Grant final plat approval for TJ Acres Subdivision located in Section 20, Township 137N, Range 51W of the Fifth Principal Meridian, Cass County, North Dakota; and for Lone Oak Farm II Subdivision located in Section 11, Township 137N, Range 50W of the Fifth Principal Meridian, Cass County, North Dakota.
- f. Approve a poker permit for Cowboy Up to be held on November 25, 2016, at the Knickerbocker Liquor Locker in Hickson, North Dakota.
- g. Contract approval
  - Centre, Inc.—continuation of an agreement for 2017-2018 for minimum security services, day reporting and electronic monitoring services for jail inmates;
  - Valley Veterinary Hospital—animal impound services five-year renewal agreement for Sheriff's Office;
  - U.S. Imaging, Inc.—agreement to scan the remaining index books for the County Recorder (funds included in the 2017 budget).

6. **FLOOD DIVERSION, Project update**

Attorney John Shockley provided an update on activities related to the FM Metro Flood Diversion project. He said the Finance Committee and Diversion Board will consider a resolution that outlines the procedures for contracting actions at their meetings this week. He said the Request for Proposals (RFP) process for the Public Private Partnership (P3) is underway.

7. **FLOOD CONTROL, State Water Commission reimbursement request approved for Metro Flood Diversion Authority**

The state legislature approved a total of \$450 million during the last three legislative sessions to be spent on flood control costs. For consideration today is the 35<sup>th</sup> request from the Metro Flood Diversion Authority, which covers eligible costs incurred from September 1, 2016, to September 30, 2016, for local matching share requirements outlined in House Bill 1020. The costs are for residential relocation assistance for homeowners displaced by Fargo in-town levees and the OHB levee; commercial relocation assistance for Oxbow Country Club; in-town levee projects; flood risk management projects for 4<sup>th</sup> Street and Rose Creek Golf Course; utility relocations for in-town levee projects; and land acquisitions that are part of home buyouts related to in-town levee and OHB levee projects.

***MOTION, passed***

**Mr. Pawluk moved and Mr. Peterson seconded to authorize the chair to sign reimbursement request #35 in the amount of \$6,062,680 to the State Water Commission to distribute funds to the Metro Flood Diversion Authority according to the terms and conditions of House Bill 1020. On roll call vote, the motion carried unanimously.**

8. **RESOLUTION #2016-22, Emergency declaration for Dakota Access Pipeline Civil Unrest**

Sheriff Paul D. Laney provided an update on protests occurring at the construction site of the Dakota Access Pipeline project in Morton County, North Dakota. He said command positions from the Sheriff's Office have returned to Cass County. He said currently four Cass County deputies are part of the regular rotation in Morton County.

U.S. District Attorney Chris Myers was present to thank the Sheriff and his staff for their work in keeping the public and the protesters safe. He also thanked the County Commission for their support of local law enforcement.

There was discussion on the lack of support from the federal government. Sheriff Laney said with the exception of assistance from the local U.S. District Attorney and U.S. Marshall's Office help has been non-existent from the federal government.

Sheriff Laney presented an emergency declaration for consideration by the commission in response to a mutual aid request from Morton County. The declaration will allow expenses to be reimbursed and will allow exempt staff to be paid overtime. He said at this time only one exempt employee will receive overtime. He does not anticipate other exempt staff to be sent to Morton County.

***MOTION, passed***

**Mr. Rasmussen moved and Mr. Peterson seconded to authorize the chair to sign Resolution #2016-22, Emergency Declaration for Dakota Access Pipeline Civil Unrest and allow exempt employees of the Cass County Sheriff's Office to be compensated monetarily for overtime pay while working under the color of the Morton County Sheriff's Office, Mandan, North Dakota, with an ending date of January 17, 2017, for the emergency declaration. Discussion: Mr. Pawluk asked when the emergency situation will end. Sheriff Laney said he is unsure when the protests will end, but the colder weather may affect the number of people protesting at the site. He does not foresee large numbers of his staff returning to Morton County. On roll call vote, the motion carried unanimously.**

**#2016-22**  
**EMERGENCY DECLARATION**  
**DAKOTA ACCESS PIPELINE**  
**CIVIL UNREST**

WHEREAS, the Cass County Board of Commissioners recognizes that due to the civil unrest occurring at the location of the Dakota Access Pipeline construction site, which will require extraordinary manpower and other resource expenditures; and

WHEREAS, the impact of civil unrest could threaten the health, well-being, and safety of responders and the public; and

WHEREAS, all available resources remain committed to protecting life and property; and

WHEREAS, the cost of response may be in excess of available budgeted resources; and

NOW, THEREFORE, BE IT RESOLVED, that the Cass County Board of Commissioners declares an emergency and implements its emergency plans and processes in response to the anticipated ongoing civil unrest.

Dated at Fargo, North Dakota, this 7<sup>th</sup> day of November, 2016.

**9. JAIL CONTRACTED PSYCHIATRY SERVICES, Funds approved to cover malpractice insurance**

The Cass County Commission approved a contract last summer with Dr. Naveed Haider to provide supplemental psychiatry services for inmates at the Cass County Jail as an independent contractor, contingent on obtaining sufficient malpractice insurance. Captain Andy Frobeg said initially these services were provided by Sanford Hospital and Family Healthcare, but since July the jail has not had psychiatry services for inmates. Dr. Haider is the only provider who is willing to contract with the county; however, the malpractice insurance premium outweighs the fee Dr. Haider will receive from the county to provide this service. Captain Frobeg said \$16,000 was budgeted for 2016 contracted psychiatry services, and he is asking the commission to cover the \$5,443.63 cost for malpractice insurance from this line item.

Mr. Peterson asked whether any legal issues exist with the county paying for malpractice insurance. Birch Burdick, State's Attorney, said he is willing to see if there are any restrictions with the county covering this cost. There was discussion on the method of paying the cost. Captain Frobeg said it could be paid through an invoice similar to other reimbursable expenses.

***MOTION, passed***

**Mr. Peterson moved and Mr. Steen seconded to authorize the purchase of malpractice insurance for Dr. Naveed Haider in the amount of \$5,443.63 using funds already budgeted for consulting services at the Cass County Jail contingent on review by the Sheriff and State's Attorney. On roll call vote, the motion carried unanimously.**

**10. CASS COUNTY LAW ENFORCEMENT CENTER, Asphalt repair to parking lot**

Sheriff Laney said after talking with the county engineer and Northern Improvement Co., an asphalt repair to the parking lot at the Law Enforcement Center will need to be discussed in the spring.

**11. TAX-FORFEITED PROPERTIES, Public hearing on appraisals**

Michael Montplaisir, Cass County Auditor, said today is the date and time advertised for a public hearing on the appraisal of tax-forfeited properties. The tax sale will be held on Tuesday, November 15, 2016, beginning at 10:00 AM.

The chairwoman opened the public hearing. Hearing no comments, the public hearing was closed.

Mr. Montplaisir discussed changes to the minimum sales price on two properties. The first property is located at 801 10½ Avenue West in West Fargo, which the county previously set a minimum sales price of \$70,000. The former owner passed away in 2010, and the property appears to have been abandoned. He said the house needs some major work and after discussions with the West Fargo City Administrator, he recommends the sales price be reduced to \$25,000. The second property is located at 931 Elm Street in Kindred, which the county previously set a minimum sales price of \$10,000. He said after talking with the Kindred City Auditor, he recommends the sales price be reduced to \$5,000 based on the condition of the property.

***MOTION, passed***

**Mr. Pawluk moved and Mr. Peterson seconded to adjust the minimum sales price on property at 801 10½ Avenue West in West Fargo to \$25,000 and to adjust the minimum sales price on property at 931 Elm Street in Kindred to \$5,000. On roll call vote, the motion carried unanimously.**

**12. HEALTH AND DENTAL INSURANCE RATES, Approved for 2017**

Mr. Montplaisir said a committee consisting of Mary Scherling, Chad Peterson, Cindy Stoick and himself reviewed several options for 2017 health insurance coverage including an increase to the deductible and co-pays along with maximum out of pocket expenses and dual option plans. After consideration, the committee recommends Cass County continue with the current plan for next year with a small cost increase to the health insurance plan and a small decrease to the dental plan.

***MOTION, passed***

**Mr. Peterson moved and Mr. Steen seconded to authorize the chairwoman to sign Attachment A for administration of the county's self-funded health and dental insurance plans through Blue Cross Blue Shield and to set the rates for 2017. On roll call vote, the motion carried unanimously.**

**13. VOUCHERS, Approved**

***MOTION, passed***

**Mr. Pawluk moved and Mr. Peterson seconded to approve Voucher No. 296,475 through Voucher No. 296,804. On roll call vote, the motion carried unanimously.**

**14. LEGISLATIVE LUNCHEON; MEETING UPDATES; ELECTION UPDATE, Committee reports**

Keith Berndt, County Administrator, asked if commissioners would like to hold their meeting with legislators that normally occurs prior to the beginning of the legislative session in conjunction with Fargo and West Fargo. The consensus of the board is to hold its own meeting with legislators to ensure issues relevant to the county are discussed.

Commissioners reported on meetings they have attended or will be attending in the upcoming weeks.

Mr. Montplaisir said 23,000 people voted at the early voting precincts last week and around 7,000 absentee ballots have been returned for the General Election, which will be held tomorrow, November 8, 2016.

**15. CORRESPONDENCE, Received and filed**

***MOTION, passed***

**Mr. Peterson moved and Mr. Rasmussen seconded to receive and file correspondence outlined by the secretary as follows: Motion carried.**

- Letter from the North Dakota Department of Transportation notifying counties about acceptance of applications for Transportation Alternatives (TA) Program projects for federal fiscal year 2018 (copy referred to county engineer);
- Letter from Houston Engineering, Inc. requesting comments on any environmental concerns with a proposed roadway improvement project on South University Drive from 18<sup>th</sup> Avenue South to 21<sup>st</sup> Avenue South including the I-94 Interchange (copy referred to county engineer);

- Letter from WBI Energy Transmission providing an update on the Valley Expansion natural gas pipeline project and inviting county officials to an open house to learn more about the project on November 2<sup>nd</sup> at the Harwood Community Center.

#### 16. REVIEW INCIDENT INVOLVING COUNTY EMPLOYEE

Mrs. Scherling was made aware of an incident involving the County Administrator while he was out of town on county business and felt it was important that action taken by the board be based on an informed decision. She has been methodical and deliberate in her response to this situation; however, as Commission Chair, whatever action deemed warranted is not her decision alone to make. She requested the State's Attorney to outline the situation, options, and process the board is required to follow.

State's Attorney Birch Burdick said under county policy, the five commissioners are the supervisor of appointed department heads. The county is bound by open meeting rules so discussion on this situation needs to be done during an open meeting. However, NDCC §44-04-18.1 outlines the confidentiality of public employees medical related treatment and records. If the board wishes to discuss this subject, it would need to be done in a closed session, and the conversation would need to be limited to medical treatment related information. The implications of the discussion or any decision making would need to be done in an open meeting.

Mrs. Scherling asked what the board wishes to do at this time. Mr. Peterson said it may be beneficial to hear a basic briefing about the incident from County Administrator Keith Berndt.

Mr. Berndt said he will do whatever the board wishes, but his preference would be to go into executive session to discuss the issue.

#### 17. EXECUTIVE SESSION CONVENED

***MOTION, passed***

**Mr. Pawluk moved and Mr. Peterson seconded to close the meeting at 5:03 PM to discuss confidential medical treatment information regarding a Cass County employee pursuant to NDCC §44-04-19.2 and NDCC §44-04-18.1. On roll call vote, the motion carried unanimously.**

The public left the Commission Room at 5:03 PM. Present for the executive session were Commissioners Ken Pawluk, Chad M. Peterson, Arland Rasmussen, Rick Steen and Mary Scherling; State's Attorney Birch Burdick; County Auditor Michael Montplaisir; County Administrator Keith Berndt; Human Resources Director Cindy Stoick; and Commission Secretary Heather Worden.

#### 18. EXECUTIVE SESSION ADJOURNED, Reconvene regular meeting

***MOTION, passed***

**Mr. Peterson moved and Mr. Rasmussen seconded to adjourn the executive session at 5:15 PM and reconvene the regular meeting. Motion carried.**

The public returned to the Commission Room, and the commissioners were back in open session at 5:16 PM.

Mrs. Scherling asked for any comments or questions from the board. Mr. Rasmussen said Mr. Berndt represents the county in a very public way, and while on business, he did not act appropriately.

***MOTION, failed due to lack of a second***

**Mr. Rasmussen moved to suspend County Administrator Keith Berndt for 15 days without pay. The motion died due to lack of a second.**

***MOTION, passed***

Mr. Peterson moved and Mr. Steen seconded to adopt Resolution #2016-23, Response to Incident Involving Keith Berndt on or about August 18, 2016 – Removal as follows: Discussion: Mr. Pawluk said he intends to vote against this motion because he believes if a person has a problem and takes steps to resolve the problem, he or she should be given a chance and is opposed to Mr. Berndt being terminated. Mr. Peterson said if this was one, two or three incidences, he would agree with Mr. Pawluk; however, Mr. Pawluk was chair and Mr. Peterson was vice chair the last time something similar to this happened, and the board has been privy to what is in the report up until now. Mr. Berndt is the leader of leaders and must conduct himself accordingly. Mrs. Scherling said this has been a very difficult situation the county has been placed in, and she has been methodical in her evaluation and has received counsel from Mr. Burdick on how to proceed with this situation in a fair way. She said this has affected staff and the function of the department and the county, and it is important to move forward. She agrees that people should be given chances, but believes the chances have been given. Mr. Berndt said he will respect any decision the commission would make, but is disappointed with Commissioner Scherling's recent comments because he thought there was an understanding there were certain things he needed to do and he did those things. Mrs. Scherling said she supported the steps he has taken since the incident happened, but it doesn't erase the situation. Mr. Burdick said under the Home Rule Charter, the removal of an appointed department head is a multiple step process. If the motion is approved, it would be the initial removal resolution and would engage a due process protocol that would allow Mr. Berndt to respond, request a hearing and have another meeting about the issue. At that time, the commission could decide whether they will support a final removal resolution. Mr. Steen believes this provides a fair process and supports this resolution. On roll call vote, the motion carried with Mr. Peterson, Mr. Steen, Mr. Rasmussen and Mrs. Scherling voting "Yes" and Mr. Pawluk voting "No".

**RESOLUTION #2016-23  
RESPONSE TO INCIDENT INVOLVING KEITH BERNDT  
ON OR ABOUT AUGUST 18, 2016 -  
REMOVAL**

WHEREAS: the Cass County Board of Commissioners became aware of an incident that occurred at O'Hare Airport involving Keith Berndt, Cass County Administrator, on or about August 18, 2016;

WHEREAS: an investigation was conducted to ascertain the facts regarding that incident including input from Keith Berndt, airline staff and others involved in or with knowledge of the incident;

WHEREAS: each of the Cass County Commissioners has had an opportunity to review the investigative report and to participate in a discussion of the incident at the regularly scheduled Board meeting on November 7, 2016, at which Keith Berndt was present and during which he had an opportunity to participate;

WHEREAS: at the time of the incident Keith Berndt was traveling on business-related purposes;

NOW, THEREFORE, BE IT RESOLVED by the Cass County Board of Commissioners that:

1. Keith Berndt's behavior during the referenced incident, and as addressed in the investigative report and as discussed at the Cass County Commission meeting on November 7, 2016, is not reflective of the behavior expected of a Cass County employee pursuant to Cass County Employee Handbook Policy 701 (Employee Conduct and Work Rules).

2. Pursuant to the Cass County Home Rule Charter, Article 7, Section 3:
  - a. The Cass County Board of Commissioners proposes to permanently remove Keith Berndt from his employment with Cass County.
  - b. Keith Berndt is advised that he is entitled to the due process protocol reflected in the Home Rule Charter, Article 7, Section 3.
  - c. While the due process protocol is pending, Keith Berndt is suspended from his duties beginning immediately. He shall receive full salary during the protocol period.

**19. ADJOURNMENT**

***MOTION, passed***

**On motion by Mr. Peterson, seconded by Mr. Pawluk and all in favor, the meeting was adjourned at 5:27 PM.**

ATTEST:

APPROVED:

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Michael Montplaisir – Auditor  
Cass County, North Dakota

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Mary Scherling, Chairwoman  
Cass County Board of Commissioners